TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935

No. 7

HAMBURG-AMERICAN LINE, PETITIONER,

vs.

PHILIP ELTING, COLLECTOR OF CUSTOMS, PORT OF NEW YORK.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 15, 1935.

CERTIORARI GRANTED APRIL 29, 1935.

SUPREME COURT OF THE UNITED STATES

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 12, 1935.

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[fol. 1]

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

L. 52/390

HAMBURG-AMERICAN LINE, Plaintiff,

against

PHILIP ELTING, Collector of Customs, Port of New York, Defendant

STATEMENT UNDER RULE XIII, PARAGRAPH 4

This action was commenced by the issuance of a summons on July 28, 1932. The summons and complaint were filed on July 29, 1932. The answer was received on September 26, 1932.

Trial was had February 2, 1934 before Hon. Francis G. Caffey and a jury of one.

Judgment was entered February 24, 1934.

Appeal taken May 9, 1934.

Bill of exceptions filed May 24, 1934.

Time to file bill of exceptions and record on appeal extended.

[fol. 2] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

SUMMONS

To the above named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service. In case of your failure to appear or answer judgment will be taken against you by default for the relief demanded in the complaint.

Witness the Honorable John C. Knox, Judge of the District Court of the United States for the Southern District of New York, at the City of New York, this 28th day of July, A. D. 1932.

Charles Weiser, Clerk.

John M. Lyons and Roger O'Donnell, Plaintiff's Attorney, Office & Post Office Address, 27 William Street, Borough of Manhattan, City of New York. (Seal.)

[fol. 3] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

COMPLAINT

Plaintiff, a corporation duly organized and existing under and pursuant to the laws of the Republic of Germany and having a place of business and transacting business at No. 39 Broadway, New York, N. Y., which is within the limits of the District Court of the United States for the Southern District of New York; for its complaint against Philip Elting, Collector of Customs, Port of New York, respectfully alleges and shows as follows:

1. That during all the times hereinafter mentioned plaintiff was and still is a corporation duly organized under the laws of the Republic of Germany and engaged as a common carrier in the transportation of passengers and cargo for hire between European ports and seaports of the United States.

2. That during all the times hereinafter mentioned defendant was and still is the Collector of Customs at the Port of New York.

3. That the plaintiff was at all times hereinafter mentioned and still is the owner of the S. S. "Milwaukee."

[fol. 4] 4. That heretofore, and on or about April 15th, 1930, plaintiff brought to the United States at the Port of New York on the S. S. "Milwaukee" as a bona fide seaman in pursuit of his calling the alien Abraham Silber, aged 23.

5. That upon arrival of the said S. S. "Milwaukee" at the Port of New York the Chief Officer of the said vessel

was given notice in writing by a representative of the Immigration Officer in Charge at the Port of New York to detain the said Abraham Silber on board the vessel; that the said notification was defective and not in accordance with Section 167 of the United States Code. That in pursuance of said notice the Master of the said S. S. "Milwaukee" did detain the seaman, Abraham Silber, on board the said vessel but in some unknown manner the said seaman subsequently left the vessel.

6. That the immigration law in effect at the time of the aforesaid seamen's arrival, as described in subd. 5 of Section 3 of the Immigration Act of 1924, provides for the admission of alien seamen serving as such on a vessel arriving at a port of the United States and seeking to enter temporarily into the United States solely in pursuit of his calling as a seaman.

7. That no notice was given to the plaintiff, the party sought to be charged.

8. That thereafter, notwithstanding that the alien was coming to the United States solely in pursuit of his calling [fol. 5] as a seaman, the plaintiff was notified that the Secretary of Labor had directed that a fine be imposed.

9. That subsequently the defendant refused to clear the said vessel and permit its departure unless the sum of $1,000.00, which represented the fine, was paid to him. That thereupon, and for the sole purpose of securing clearance and avoiding detention of the vessel and to permit of its departure, the plaintiff under protest deposited the sum of $1,000.00 with the defendant.

10. That the alien was brought to the United States because he was a seaman and as such had a right to go ashore for a period of sixty days.

11. That in bringing the said alien to the United States on the S. S. "Milwaukee" and the fact that this alien seaman left the vessel did not justify the imposition of any fine on the plaintiff, and the act of the Secretary of Labor in imposing a fine was without lawful authority and arbitrary and the defendant had and received said money to the use of the said plaintiff.

12. That the alleged inadmissibility of the aforesaid alien seaman was not known and could not have been ascertained by the exercise of reasonable diligence by the plaintiff herein prior to the alien's departure from the foreign port of embarkation.

13. That demand has been duly made by the plaintiff and payment has been refused by the defendant.

Wherefore, plaintiff demands judgment against the defendant in the sum of $1,000.00 with interest thereon from [fol. 6] March 23, 1931, together with the costs and disbursements of this action.

John M. Lyons, Roger O'Donnell, Attorneys for Plaintiff, Office & P. O. Address, 27 William Street, 60 Broad Street, Borough of Manhattan, New York City.

Duly sworn to by John Pannes. Jurat omitted in printing.

[fol. 7] In United States District Court, Southern District of New York

[Title omitted]

Answer

The above named defendant, by George Z. Medalie, United States Attorney for the Southern District of New York, his attorney, for his answer to the complaint herein:

1. Admits that on or about April 15, 1930, the plaintiff brought to the Port of New York on the S. S. Milwaukee an alien, Abraham Silber, and except as thus expressly admitted, denies on information and belief each and every allegation contained in paragraph numbered "4" of the complaint.

2. Admits that upon arrival of the said S. S. Milwaukee at the Port of New York the chief officer of the said vessel was given notice in writing by a representative of the immigration office in charge of the Port of New York to detain the said Abraham Silber on board the said vessel and that after the giving of the said notice the said alien Abraham

Silber left the vessel, and except as thus expressly admitted, denies on information and belief each and every allegation contained in paragraph numbered "5" of the complaint.

[fol. 8] 3. Denies on information and belief each and every allegation contained in paragraph numbered "7" of the complaint.

4. Admits that the plaintiff was notified that the Secretary of Labor had directed that a fine be imposed, and except as thus expressly admitted denies on information and belief each and every allegation contained in paragraph numbered "8" of the complaint.

5. Denies that he has any knowledge or information sufficient to form a belief as to the allegations contained in paragraph numbered "10" of the complaint.

6. Denies on information and belief each and every allegation contained in paragraphs numbered "11" and "12" of the complaint.

Wherefore, the defendant demands judgment against the plaintiff dismissing the complaint, together with the costs and disbursements of this action.

George Z. Medalie, United States Attorney, Southern District of New York, Attorney for Defendant, Office & P. O. Address, U. S. Courts & P. O. Bldg., Borough of Manhattan, City of New York.

[fol. 9] *Duly sworn to by Philip Elting. Jurat omitted in printing.*

In United States District Court, Southern District of New York

L. 52/390

Hamburg-American Line, Plaintiff,

vs.

Philip Elting, Collector of Customs, Port of New York, Defendant

Judgment

The issues in this action having been regularly brought on for trial before the Honorable Francis G. Caffey, United

[fol. 10] States District Judge, and a jury of one, at a stated term of this Court held on the 2nd day of February, 1934, and the plaintiff appearing by John M. Lyons, Esq., its attorney, (Roger O'Donnell, Esq., of counsel) and the defendant appearing by Martin Conboy, United States Attorney for the Southern District of New York, his attorney, (George B. Schoonmaker, Assistant United States Attorney, of counsel) and the allegations and proofs on behalf of the plaintiff and the defendant having been heard and considered and thereafter at the close of the testimony for both sides, the attorney for the plaintiff having moved for the direction of a verdict in favor of the plaintiff and the attorney for the defendant having moved for the direction of a verdict in favor of the defendant, dismissing the complaint, and the Court having directed a verdict in favor of the defendant and the defendant's costs having been taxed in the sum of $30.00.

Now, on motion of Martin Conboy, United States Attorney for the Southern District of New York, attorney for the defendant, it is

Ordered and adjudged that the complaint herein be and the same hereby is dismissed on the merits, and that Philip Elting, Collector of Customs, Port of New York, the defendant herein, recover of Hamburg-American Line, the plaintiff herein, the sum of $30.00, costs as taxed, and that the defendant have execution therefor.

Judgment signed this 24th day of February, 1934.

Charles Weiser, Clerk.

[fol. 11] In United States District Court, Southern District of New York

[Title omitted]

Plaintiff's Bill of Exceptions

Before Hon. Francis G. Caffey, J., and a jury of one

New York, N. Y., February 2, 1934.

Appearances:

John M. Lyons, Esq., and Roger O'Donnell, Esq., of counsel, for the Plaintiff.

Martin Conboy, Esq., United States Attorney, by George B. Schoonmaker, Esq., Assistant U. S. Attorney, for the defendant.

STIPULATION AS TO TRIAL

It was stipulated by and between the attorneys for the respective parties hereto that this case should be tried before the Court and a jury of one with the same force and effect as if tried before the Court and a jury of twelve, and that each side should move for a directed verdict at the close of the case.

A jury of one was duly impaneled and sworn.

[fol. 12] The plaintiff placed in evidence Department of Labor, Bureau of Immigration, File No. 55733/53, as Exhibit 1.

The plaintiff and the defendant then rested.

MOTIONS FOR DIRECTED VERDICT

Thereupon the plaintiff moved for a directed verdict in favor of the plaintiff and the defendant moved for a directed verdict in favor of the defendant.

The Court (orally: "I think that, apart from the additional point made by the defendant that this case grew out of the records showing the testimony of the master, this case comes within the French Line case L 50-136, which I have already disposed of this morning.

The jury accordingly returned a verdict in favor of the defendant as directed.

The plaintiff excepted to the direction of the verdict in favor of the defendant and to the denial of the plaintiff's motion. Exception granted.

ORDER SETTLING BILL OF EXCEPTIONS

Upon the annexed consent and on motion of John M. Lyons, attorney for the plaintiff herein, I hereby sign, settle and allow the foregoing, together with the Exhibit admitted in evidence, as and for the plaintiff's bill of exceptions, and order the same to be filed.

Dated, New York, N. Y., May 24th, 1934.

Francis G. Caffey, U. S. D. J.

[fol. 13] I hereby consent to the settling, allowing and filing of the above, together with the Exhibit admitted in evidence, as and for the plaintiff's bill of exceptions.

Dated, New York, N. Y., May 23rd, 1934.

Martin Conboy, United States Attorney, Attorney for Defendant.

PLAINTIFF'S EXHIBIT 1

Department of Labor,

Bureau of Immigration

File No. 55733/53.

U. S. Department of Labor

Immigration Service

Office of Commissioner of Immigration, Ellis Island, New York Harbor, N. Y.

In answering refer to No. 99179/394.

August 19, 1930.

Commissioner General of Immigration, Washington D. C.

There is enclosed herewith notice of liability for fine served on the Hamburg-American Line of 39 Broadway, New York City, incident to a violation of section 18 of the [fol. 14] Act of February 5, 1917 for failure to detain on board and deport the alien passenger Eljasz Bank who arrived at this port on the SS "Milwaukee" April 15, 1930. There is also enclosed notice of liability for fine served at the same time incident to a violation of sections 19 and 20 of the Act of May 26, 1924 for failure to detain on board, after service of order to do so, the alien seaman Abraham Silber.

Copies of Forms 559, report of Inspector J. J. McKee dated April 15, 1930, copy of translation of report of the Master of the steamship in question, report of Inspector J. J. McKee dated April 21, 1930, and letter from the Hamburg-American Line dated August 12, 1930, are attached hereto for the Department's consideration.

Instructions are awaited as to imposition of fine.

Byron H. Uhl, Assistant Commissioner.

AK:
Encl.

U. S. Department of Labor,

Immigration Service

In Answering Refer to No. ——.

Office of Commissioner of Immigration, Ellis Island,
New York Harbor, N. Y.

April 21, 1930.

Commissioner of Immigration.

The "Milwaukee," of the Hamburg-American Line, arrived here on the 15th inst. from Hamburg, via Halifax, [fol. 15] at which latter port aliens Julius Keller and Eljasz Bank, ordered deported by the Canadian Government, were placed aboard the ship. Inspector Walter Montgomery served an order on the First Officer of the vessel, directing that these aliens be detained on board. Copy of the detention order was sent to the Executive Office on the 15th inst. with my letter on this subject.

Abraham Silber, Polish, age 23, a galleyman in the crew, did not establish that he had no intention of abandoning his calling, and Inspector Ostrom served an order on the First Officer directing that Silber be detained on board the ship. Copy of this order is hereto attached.

Inspector Maypother, who was present when the "Milwaukee" left this port, 3:00 P. M. 19th inst., reports that Abraham Silber and Eljasz Bank were not on board. A statement by the Master of the ship is attached hereto. It is written in German, and probably contains an explanation of the escape of these men.

J. J. McKee, Inspector-in-Charge, Boarding Division.

[fol. 16] Copy

Translation #6000.

New York, April 19, 1930

SS. Milwaukee.
Trip 9.

Report on the escape of prisoners from ship.

When the SS "St. Louis" arrived at New York, the immigration officers forbade to go off board the passenger of the tourists' class: Elias Bank who was deported from Halifax,—and the ritual cook: Abraham Silber.

Upon the order of the Hamburg American Line, these two men were to be kept aboard and a watchman of the H. A. L. pier police was detailed to hold them in custody.

The two men were locked up in the Isolation Hospital, a watchman of the H. A. L. was posted in front of the door, and the keys given in his hands. The ritual cook was given charge of preparing the meals. The watchmen on duty were controlled from time to time by the officers in charge.

Beginning Friday afternoon 4 o'clock until 12 o'clock the following watchmen were on duty:

Watchman Wahlsch.
Roundsman Donn.

Between midnight and 8 o'clock in the morning:

Watchman Newelle.
Roundsman Wollenreiter.

Second mate Mr. Oertel, making the rounds at 5:30 p. m. found the watchman at his post and the prisoners locked up.

[fol. 17] Shortly after 8 p. m. and at 10 p. m. the IV mate Mr. Eichenhorst made the rounds and found everything to be in order.

Around 2 o'clock in the morning the quartermaster reported to III mate Mr. Rieger that the two prisoners have escaped.

The III mate immediately reported this to Mr. Oertel. An immediate search revealed the fact that, although the watchman was at his post in front of the locked door, the Hospital was empty.

As already mentioned, only the pier watchman had the keys.

Unreadable sign. Master.

Translated from German, Ellis Island, April 24, 1930.
/s/ Armand Lorant, Interpreter.

Copied—AK.

Copy

Notice to Deliver, Detain on Board, or Remove Aliens

U. S. Department of Labor,

Immigration Service

Port of New York, 4/15/1930.

To the Owner, Agent, Consignee, Master or Officer in Charge of the SS Milwaukee, Hamburg American Line:

Pursuant to the provisions of the Acts of February 5, 1917, December 26, 1920, and May 26, 1924, and the Immi- [fol. 18] gration Regulations issued by the Secretary of Labor thereunder, you are hereby directed to detain on board S. S. Milwaukee the following-named aliens, with their baggage, your attention being invited to the appropriate sections of the statute appearing on the reverse side hereof:

Name, Abraham Silber; Status on Vessel, Galleyman—Age 23. Member of Crew. Has not established that he has no intention to abandon his calling.

By direction of the Immigration Officer in Charge.

/S/ (illegible), U. S. Immigrant Inspector.

Receipt of the above notice is hereby acknowledged.

/S/ (illegible), Signature.

Copied—AK.

[fol. 19] Duplicate

Notice of Liability for Fine Under U. S. Immigration Laws,

U. S. Department of Labor

Immigration Service

99179/394

Office of Commissioner, Port of New York

April 25, 1930.

To Hamburg American Line, Agents of the Vessel "Milwaukee" 4/15/30, 39 Broadway, N. Y. C.

In conformity with the requirements of Rule 22 of the Immigration Regulations, you are hereby notified that the

evidence on file with respect to the alien named below, who arrived on the ship and date named above, indicates that a fine should be imposed under Sections 19 and 20 of the Act of 1924, on the grounds stated hereunder.

If you desire a hearing, as to whether a fine should be imposed in this instance, you will be allowed 60 days from the date of this notice for that purpose, and the vessel on which the said alien arrived will be granted clearance papers when she is ready to sail and allowed to proceed upon her outward-bound voyage upon condition that you deposit with the collector of customs at this port, prior thereto, the sum indicated below as security for the payment of the said fine should it be imposed.

Please submit protest in duplicate.

[fol. 20] Name of alien: Abraham Silber, 23m galleyman.

Amount required to be deposited: $1,000.

Basis for proposed fine: Failure to detain on board, after service of order to do so.

Benj. M. Day, Commissioner.

AK.

Received the above notice May 2, 1930.

Hamburg-American Line, Per J. Krive.

Witness, John Galley.

Hamburg-American Line

Operating Department

Pier 86, North River

Foot of West 46th Street

New York

August 12th, 1930.

Commissioner of Immigration, Ellis Island, N. Y.

SIR:

In reference to your fine notice No. 99179/394 relating to the case of Abraham Silber ex ms Milwaukee, April 15th, 1930, we beg to request that the papers be forwarded to the Department of Labor in Washington with notice that our attorney there, Mr. Roger O'Donnell, will appear and

[fol. 21] present suitable defense to the proposed penalization.

Respectfully yours, Hamburg American Line, G. Koetter, Operating Manager.

GK/R.

Law Office of

Roger O'Donnell,

Westory Building, Washington, D. C.

June 26, 1930.

The Honorable The Secretary of Labor, Washington, D. C.

SIR:

Entry of Appearance is hereby made in the case of the person named below, which is to come before the Department of Labor on fine proceedings.

Name: Abraham Silber, ss "Milwaukee" 4/15/30.

Port: New York, N. Y.

I will appear as attorney for the Hamburg American Line in the above proceedings.

Upon receipt of the record, advices are requested by the undersigned.

Respectfully, Roger O'Donnell.

[fol. 22] Law Office of

Roger O'Donnell,

Westory Building, Washington, D. C.

September 2, 1930.

HAL # Op.

Commissioner-General of Immigration, Department of Labor, Washington, D. C.

File No. 55733/53

SIR:

This file relates to a fine notice served on the Hamburg-American Line under date of April 25, 1930, based on Sections 19 and 20 of the Act of 1924, for alleged failure to

detain on board one Abraham Silber, a member of the crew of the M. S. "Milwaukee," arriving at New York on April 15, 1930.

The record shows that this notice to detain was given to the chief officer of the vessel and no notice whatever was given to the owner, charterer, agent, consignee, or master of the vessel, as required by the plain terms of Section 20.

There is no authority in law for constructive service upon the persons named in the statute, and the recent decision of the Circuit Court of Appeals for the Second Circuit in the case of United States v. J. H. Winchester & Co., Inc., shows this to be the case and points out that this highly penal statute must be construed strictly.

[fol. 23] The first officer of a ship is not an agent of the owners and service of notice upon him does not charge the owners with the notice which the statute obviously requires.

It is therefore clear that no penalty was incurred, and the fine notice should be withdrawn. Protest is made accordingly, and all legal rights reserved on behalf of the Hamburg-American Line.

Respectfully, Roger O'Donnell, Attorney for the Hamburg-American Line.

ROD:jr.

Ellis Island.

55733/53 October 10, 1930.

In re: S. S. "Milwaukee," April 15, 1930

Alien: Abraham Silber

This case comes before the Board of Review in fine proceeedings.

No hearing. Attorney Roger O'Donnell interested.

This record relates to a fine proceeding under Section 20 of the Act of 1924 against the S. S. "Milwaukee" at New York on April 15, 1930, incident to the failure of the master of the vessel to detain on board and deport the alien seaman, Abraham Silber, after an order to do so had been served upon the said master.

[fol. 24] In the protest made to the imposition of fine it is not denied that there was a violation of law. It is claimed, however, that under the ruling of the Circuit Court of Appeals for the Second Circuit in the Winchester case the Hamburg American Line, who was served with the notice of intention to fine, cannot be held responsible for the viola-

tion of law which occurred, inasmuch as the original notice to detain on board was not given to the line. The argument goes to the question of collecting the penalty. It is assumed that when the violation of law became known, clearance was withheld, and the master, or interested parties in his behalf, filed bond to cover the amount of the proposed penalty. If such is the case, it is not seen how the decision in the Winchester case in any way prevents collection of the penalty.

In order that the facts may be before the Department in the determination of the case, Ellis Island should be requested to advise whether or not bond has been filed in the case to cover the amount of the proposeed fine, and if so, the party primarily responsible under the bond.

It is recommended that Ellis Island be requested to advise whether or not bond has been filed in the case to cover the amount of the proposed fine, and if so, the party primarily responsible under the bond.

L. Paul Winings, Chairman, Secy. & Comr., Genl's Board of Review.

JS:hb.

So ordered.

P. F. Snyder, Assistant to the Secretary.

[fol. 25] U. S. Department of Labor,

Bureau of Immigration,

WASHINGTON

55733/53.
C

October 20, 1930.

Commissioner of Immigration, Ellis Island, N. Y. H.

The Bureau acknowledges the receipt of your letter No. 99179/394 relating to the appeal case of fine proceedings in the case of Abraham Silber, ex S. S. "Milwaukee," April 15, 1930.

After careful consideration of the evidence presented in the record, the Department has directed that you be requested to advise whether or not bond has been filed in the

case to cover the amount of the proposed fine, and if so, the party primarily responsible under the bond.

(Sighed) Harry E. Hull, Commissioner General.

Oct. 20, 1930.

OB.

[fol. 26] U. S. Department of Labor,

Immigration Service,

Office of Commissioner of Immigration, Ellis Island, New York Harbor, N. Y.

In answering refer to No. 99179/394

October 27, 1930.

Commissioner General of Immigration, Washington, D. C.

In response to your letter of the 20th instant, No. 55733/53C, relative to the case of Abraham Silber, ex S. S. "Milwaukee" April 15th, 1930, you are advised that according to information received from the Collector of Customs at this port, the Hamburg-American Line has a bond on deposit at that office to cover all Act of 1924 fines.

Byron H. Uhl, Assistant Commissioner of Immigration, New York District.

AK.

Ellis Island

55733/53. February 13, 1931.

In re: S. S. "Milwaukee," April 15, 1930.
Alien: Abraham Silber.

This case comes before the Board of Review for further consideration in fine proceedings.

No hearing. Attorney Roger O'Donnell interested.

This record relates to a fine proceeding under Section 20 of the Act of 1924 against the S. S. "Milwaukee" at New [fol. 27] York on April 15, 1930, incident to the failure of the master of the vessel to detain on board and deport the alien seaman, Abraham Silber, after an order to do so had been served upon the said master.

When this case was considered by the Department on October 10, 1930, it was found that there had been a viola-

tion of the provisions of Section 20 of the Act of 1924 and that the penalty named therein had been incurred. The defense, however, was submitted by the line that under the ruling of the Circuit Court of Appeals in the Winchester case the line could not be held liable for the penalty inasmuch as notice to detain on board had not been served on the line.

It appears from a report received from the port that the line in question has a blanket bond filed with the Collector of Customs guaranteeing the payment of all fines which may be incurred under the immigration laws. If the bond covers all fines which may be ordered imposed against a vessel of the line it is not seen how the rule laid down in the Winchester decision applies. The question before the Court in the event legal steps become necessary to collect the fine is whether or not the bond filed covers all fines which may be incurred by any ships of the line, including the fine in this proceeding. That issue is not for the Department's determination.

It is recommended that fine be imposed. The sum involved is $1,000.

L. Paul Winings, Chairman, Secy. & Comr., Genl's Board of Review.

JS:HB

So ordered:

W. N. Smelser, Assistant to the Secretary.

[fol. 28] In United States District Court, Southern District of New York

[Title omitted]

Assignment of Errors

Now comes the plaintiff by John M. Lyons, its attorney herein, and says that the District Court of the United States for the Southern District of New York in rendering the judgment herein, dated February 24, 1934, in favor of the defendant against the plaintiff, erred in the following respects, to wit:

First. That the Court erred in dismissing the complaint herein and in directing judgment for the defendant.

Second. That the Court erred in granting defendant's motion for a directed verdict herein.

Third. That the Court erred in holding that the Secretary of Labor was not arbitrary in imposing fines on the plaintiff under Section 20 of the Immigration Act of 1924 and Section 32 of the Immigration Act of 1917.

Fourth. That the Court erred in holding that by the provisions of Section 20 of the Immigration Act of 1924 it is not required that the inspection of alien seamen be made [fol. 29] by the Immigration Officer-in-Charge at the port of arrival—in this instance the Commissioner of Immigration at the Port of New York.

Fifth. That the Court erred in holding that the fine notice was not worthless unless issued by the Immigration Officer-in-Charge at the port of arrival.

Sixth. That the Court erred in not holding that the owner, charterer, agent, consignee or master, to become liable to a fine under Section 20 of the Immigration Act of 1924 for the escape of an alien seaman, must be individually ordered to detain the seaman on board.

Seventh. That the Court erred in not holding that in order to lay the basis for the imposition of a fine under Section 20 of the Immigration Act of 1924 against the owner of the vessel for the escape of an alien seaman, the notice to detain the seaman and the notice of intention to fine must both be served on the owner, plaintiff herein.

Eighth. That the Court erred in holding that there was sufficient evidence in the records before the Secretary of Labor upon which to predicate a fine for the escape of the alien seaman involved herein.

Ninth. That the Court erred in holding that notice to the master of the vessel is sufficient notice to the owner.

[fol. 30] Wherefore, the plaintiff prays that the judgment herein in favor of the defendant be reversed and held for naught and that the plaintiff be restored to all things which it has lost by reason of the said judgment.

Dated, New York, N. Y., May 8, 1934.

John M. Lyons, Attorney for Plaintiff, Office & P. O. Address, 27 William Street, Borough of Manhattan, New York City.

In United States District Court, Southern District of New York

[Title omitted]

Petition for and Allowance of Appeal

Now comes the plaintiff, Hamburg-American Line, and says that on the 24th day of February, 1934, the Court entered judgment herein against it dismissing the complaint [fol. 31] on its merits, and that by such judgment certain errors were committed to the prejudice of the plaintiff, all of which will more fully appear from the assignment of errors filed with this petition.

Wherefore, the plaintiff prays for an appeal from the said judgment to the United States Circuit Court of Appeals for the Second Circuit for the correction of the errors so complained of and for the allowance of the appeal and for leave to prosecute the same, and that a transcript of the record and proceedings in this cause, duly authenticated, be forwarded to the said Circuit Court of Appeals.

Dated, New York, N. Y., May 9, 1934.

John M. Lyons, Attorney for Plaintiff, Office & P. O. Address, 27 William Street, Borough of Manhattan, New York City.

The foregoing appeal is hereby allowed.

Dated, New York, N. Y., May 9th, 1934.

Robert P. Patterson, U. S. D. J.

[fol. 32] Citation in usual form omitted in printing.

[fol. 33] In United States District Court, Southern District of New York

[Title omitted]

Stipulation as to Record

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of the said District Court in the above entitled action, as agreed upon by the parties.

Dated, New York, June 8, 1934.

John M. Lyons, Roger O'Donnell, Attorneys for Plaintiff-Appellant. Martin Conboy, United States Attorney, Attorney for Defendant-Appellee.

[fol. 34] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 35] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1934

Nos. 52, 97

Argued Nov. 20, 1934. Decided Dec. 10, 1934

COMPAGNIE GENERALE TRANSATLANTIQUE, Appellant,

v.

PHILIP ELTING, Collector of Customs at the Port of New York, Appellee

HAMBURG-AMERICAN LINE, Appellant,

v.

PHILIP ELTING, Collector of Customs at the Port of New York, Appellee

Appeals from the District Court of the United States for the Southern District of New York

Before Manton, L. Hand, and Swan, Circuit Judges

Suits to recover penalties imposed for violation of the Immigration Act of 1924 (section 20 [8 U. S. C. A. § 167]). Judgments for defendants; plaintiffs appeal. Affirmed.

Roger O'Donnell, of Washington, D. C., and John M. Lyons, of New York City, for appellants.

Martin Conboy, U. S. Atty., of New York City (George B. Schoonmaker, Asst. U. S. Atty., of New York City, of counsel), for appellee.

MANTON, Circuit Judge:

These cases involve similar questions and will be considered in one opinion. In Compagnie Generale Transatlantique, the steamship Ile de France arrived at the port of New York February 6, 1930, having on board alien seamen. The immigration inspector boarded the vessel, examined the crew, and directed the detention of 102 members because they did not establish to his satisfaction that they were bona fide seamen. An order of detention was served upon the fourth officer of the vessel and also a

person designated as commander. Thereafter two of the seamen ordered detained escaped.

In the Hamburg-American Line Case, the steamship Milwaukee arrived at the port of New York April 15, 1930, with one alien seaman who did not establish to the satisfaction of the immigration inspector, who boarded the vessel upon arrival, that he had no intention of abandoning his calling. A notice of detention was served on the first officer of the vessel directing the detention of this seaman. Later he escaped.

Notice of hearing in the first case was given to the appellant, the owner of the vessel, designated as the "French Line, Agent of the Vessel 'Ile de France.'" Appellant, by counsel, appeared before the Department of Labor and protested against the fine. In the Hamburg-American Line Case, the notice was served upon this appellant, owner of the vessel, designated in the notice as the "Hamburg-American Line, Agents for the Vessel 'Milwaukee.'" It appeared before the Department of Labor, and its attorney protested against the imposition of the fine, alleging that the order of detention served on the first officer was invalid, asserting that there could be no constructive notice of the order to detain and that the first officer of the ship [fol. 36] was not the agent of the owners. After the imposition of the fines, they were paid to obtain clearance of the vessels.

The officer served on each vessel was in charge of that vessel at the time of the service of the order of detention. In the Hamburg-American Line Case, it was the inspector's duty to serve the order on the officer who had the responsibility and control of the crew for the detention of any one of them on board. Ordinarily this is the master. When the master is not in charge of the vessel presumably it is the first officer who takes the master's place. United States v. Chemical Foundation, 272 U. S. 1, 47 S. Ct. 1, 71 L. Ed. 131. In the Hamburg-American Line Case, in any event, the master's report shows that he had notice of the order long before the alien escaped, and that he acted upon it. He was required to obey the order of detention and failed to do so.

In the Compagnie Generale Transatlantique Case, the notice was sufficient as served. The owner was charged with the master's or commander's delinquency. It had

notice that the fine would be collected from it and was represented by the attorney who unsuccessfully protested. For the reasons stated in the British Empire Steam Navigation Co. Case (C. C. A.) — F. (2d) —, and the Societe Ligure Di Aramento Case (C. C. A.) — F. (2d) —, decided this day, there were no errors below.

Judgments affirmed.

[fol. 37] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a stated term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the court-rooms in the Post Office building in the City of New York, on the 17th day of December, one thousand nine hundred and thirty-four.

Present: Hon. Martin T. Manton, Hon. Learned Hand, Hon. Thomas W. Swan, Circuit Judges.

HAMBURG-AMERICAN LINE, Plaintiff-Appellant,

vs.

PHILIP ELTING, as Collector, etc., Defendant-Appellee

Appeal from the District Court of the United States for the Southern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed with costs.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Wm. Parkin, Clerk.

[fol. 38] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. Hamburg-American Line vs. Philip Elting, as Collector, etc. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Dec. 17, 1934. William Parkin, Clerk.

[fol. 39] UNITED STATES OF AMERICA,
Southern District of New York:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 38, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Hamburg-American Line, Plaintiff-Appellant, against Philip Elting, as Collector, etc., Defendant-Appellee, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 16th day of January, in the year of our Lord one thousand nine hundred and thirty-five, and of the Independence of the said United States the one hundred and fifty-ninth.

Wm. Parkin, Clerk. (Seal United States Circuit Court of Appeals, Second Circuit.)

[fol. 40] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 29, 1935

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 39,411, 39,412. U. S. Circuit Court of Appeals, Second Circuit. Term No. 6. Compagnie Generale Transatlantique, Petitioner, vs. Philip Elting, Collector of Customs, Port of New York. Term No. 7. Hamburg-American Line, Petitioner, vs. Philip Elting, Collector of Customs, Port of New York. Petition for writs of certiorari and exhibits thereto. Filed March 15, 1935. File No. 6 O. T. 1935, 7 O. T. 1935.